

Message Text

PAGE 01 STATE 147448

73

ORIGIN EB-11

INFO OCT-01 EUR-25 EA-11 IO-14 ISO-00 L-03 AID-20 CEA-02

CIAE-00 COME-00 FRB-02 INR-10 NEA-14 NSAE-00 RSC-01

OPIC-12 SP-03 TRSE-00 CIEP-02 LAB-06 SIL-01 SWF-02

OMB-01 DODE-00 DOTE-00 FMC-04 CG-00 COA-02 DLOS-07

STR-08 SAJ-01 /163 R

DRAFTED BY EB/TT/MA:RWEBB:EW

APPROVED BY EB/TT/MA:RWEBB

TREAS: MR. BLAKE (SUBS.)

EUR/RPE - MR. CLARK

MARAD: MR. GAGE (INFO.)

FMC: MR. SMITH (INFO.)

COMMERCE: MR. ANTOUN (INFO.)

L/EB: MR. WILLIS

----- 058579

P R 091912Z JUL 74

FM SECSTATE WASHDC

TO USMISSION OECD PARIS PRIORITY

INFO USMISSION GENEVA

AMEMBASSY LONDON

AMEMBASSY BRUSSELS

AMEMBASSY TOKYO

AMEMBASSY BONN

AMCONSUL HAMBURG

AMEMBASSY COPENHAGEN

AMEMBASSY OSLO

USMISSION EC BRUSSELS

AMEMBASSY THE HAGUE

AMEMBASSY MADRID

USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 147448

E.O.11652:N/A

CONFIDENTIAL

PAGE 02 STATE 147448

TAGS: ETRN, EFIN, OECD, UNCTAD

SUBJECT: SHIPPING: STUDIES OF UN LINER CODE BY OECD

INVISIBLES COMMITTEE

REF: A) STATE 144455; B) STATE 135632

1. FOLLOWING INTENDED AS BACKGROUND GUIDANCE FOR US MISSION (ESPECIALLY US EXPERT TO INVISIBLES COMMITTEE) ON SUBJECT EXERCISE, AND AMPLIFIES PARA. 3 OF REF B. OVERALL US OBJECTIVE IN THIS EXERCISE, AS STATED PARA. 3 OF STATE 134005 IS ULTIMATE FINDING OF INCOMPATIBILITY BETWEEN UN LINER CODE AND OECD CODE OF INVISIBLES LIBERALIZATION. THIS WOULD SERVE BROADER US OBJECTIVES OF PREVENTING OR SLOWING DOWN ENTRY INTO FORCE AND EFFECTIVE IMPLEMENTATION OF UN LINER CODE. OUR OBJECTIONS TO LINER CODE ARE SET FORTH IN DEPARTMENT'S A-5007 OF JUNE 19. IN SEEKING OBJECTIVE DESCRIBED ABOVE, HOWEVER, MISSION NEEDS TO KEEP IN MIND FOLLOWING RATHER COMPLICATED SHIPPING POLICY SITUATION.

2. US OPPOSED UN LINER CODE INTER ALIA BECAUSE IT DISCRIMINATORY AMONG COUNTRIES, INCONSISTENT WITH LIBERAL ECONOMIC POLICY, AND INJURIOUS TO TRADE INTERESTS. HOWEVER, AS SEEN BY FOREIGN EYES, MANY US SHIPPING POLICIES ALSO FIT THIS DESCRIPTION. THEIR TYPICAL CRITICISMS OF US POLICIES ARE AS FOLLOW:

(A) PROMOTIONAL POLICIES--US EMPLOYS SUBSIDY AND CARGO PREFERENCE MEASURES, INCLUDING DISCRIMINATORY DISC PROVISIONS, TO PROMOTE US MERCHANT MARINE IN WAY WHICH NOT CONSISTENT WITH LIBERAL ECONOMIC POLICIES.

(B) REGULATORY POLICIES--US REGULATORY MECHANISM (FMC) IS MEANS TO PROTECT US SHIPPING LINES VIS-A-VIS FOREIGN SHIPPING LINES.

(C) BILATERAL POOLING AGREEMENTS--FMC AS GOVERNMENTAL AGENCY HAS APPROVED BILATERAL POOLING AGREEMENTS BETWEEN US AND INDIVIDUAL LATIN SHIPPING LINES WHICH DISCRIMINATE AGAINST THIRD-FLAG CARRIERS, AND WHICH VIOLATE US MFN UNDERTAKINGS.
CONFIDENTIAL

PAGE 03 STATE 147448

(D) US-USSR MARITIME AGREEMENT--THIS BILATERAL AGREEMENT CONTAINS CARGO-SHARING FORMULA (1/3; 1/3; 1/3) WHICH NOT FAR REMOVED FROM LINER CODE CARGO-SHARING PROVISIONS.

3. IN CONTRAST WE CONSIDER THAT MOST OF ABOVE REFERRED TO POLICIES ARE ENTIRELY CONSISTENT WITH GENERAL US EMPHASIS ON MULTILATERAL NON-DISCRIMINATORY LIBERAL ECONOMIC POLICIES. FOLLOWING IS HIGHLY ABBREVIATED REBUTTAL TO ABOVE CRITICISMS.

4. PROMOTIONAL POLICY--

(A) US SUBSIDY PROGRAMS MAY BE UNIQUE ONLY IN THEIR SIZE

AS OTHER MARITIME COUNTRIES PROVIDE VARIOUS TYPES OF FINANCIAL AIDS TO THEIR SHIPPING INDUSTRY. US SUBSIDY POLICY IS NOT CONTRARY TO ANY INTERNATIONALLY ACCEPTED RULES OR GUIDELINES (OECD WP-6 IS ONLY NOW BREAKING GROUND IN THIS AREA) AND RATHER IS GENERALLY VIEWED AS PREFERRED MEANS TO PROMOTE US MERCHANT MARINE (WHICH EUROPEANS RECOGNIZE AS NECESSARY, INTER ALIA, FOR NATIONAL SECURITY REASONS).

(B) US CARGO PREFERENCE MEASURES APPLY ONLY TO GOVERNMENT-OWNED, -FINANCED, OR -IMPELLED CARGOES, WHICH IT CAN BE ARGUED WOULD NOT MOVE EXCEPT FOR US GOVERNMENT ROLE AND IN WHICH, THEREFORE, USG HAS PROPRIETARY RIGHT IN ROUTING OF CARGO (ALTHOUGH OTHERS MAY ARGUE THAT THIS IS POOR ALLOCATION OF RESOURCES). WE MAINTAIN AS LEGAL POINT THAT SUCH CARGO-ROUTING IS NOT INCONSISTENT WITH THE MFN OBLIGATIONS OF OUR FCN OR OTHER TREATIES (ENACTMENT OF OIL IMPORT CARGO PREFERENCE BILL WOULD OF COURSE DRASTICALLY ALTER THIS SITUATION).

(C) DISC--WE RECOGNIZE THAT DISC SHIPPING PROVISIONS ARE DISCRIMINATORY AND PROBABLY CONTRARY TO OUR OBLIGATIONS UNDER FCN TREATIES. ADMINISTRATION IS ATTEMPTING TO HAVE THESE PROVISIONS REPEALED AND EUROPEANS ARE AWARE OF THIS.

5. REGULATORY POLICIES--UNDERLYING LEGISLATION (SHIPPING ACT, 1916) AND IMPLEMENTING REGULATIONS OF FMC REST
CONFIDENTIAL

PAGE 04 STATE 147448

HEAVILY ON NON-DISCRIMINATION PRINCIPLE. AS NATIONAL SHIPPING TRIBUNAL, FMC IS PROBABLY UNIQUE IN WORLD IN BEING EQUALLY ACCESSIBLE TO FOREIGN AS TO NATIONAL SHIPPING INTERESTS AND FORMER HAVE FREQUENTLY MADE USE OF THIS FORUM TO PROTECT THEIR INTERESTS.

6. POOLING AGREEMENTS--BILATERAL POOLING AGREEMENTS BETWEEN US AND LA NATIONAL SHIPPING LINES ARE COMPLETELY DISTINCT FROM INTERGOVERNMENTAL CARGO-SHARING AGREEMENTS FOUND ELSEWHERE BECAUSE THEY ARE ESSENTIALLY CONTRACTUAL AGREEMENTS BETWEEN COMMERCIAL SHIPPING LINES (ALTHOUGH MANY OF LATIN AMERICAN SHIPPING LINES ARE GOVERNMENT-OWNED). ALTHOUGH USG HAS BLESSED THESE AGREEMENTS THROUGH FORMAL FMC APPROVAL, IT HAS DONE SO (A) AS EXCEPTION TO GENERAL PRINCIPLE THAT POOLING AGREEMENTS ARE UNDULY RESTRICTIVE OF COMPETITION, (B) UPON FINDING OF A SERIOUS TRANSPORTATION NEED FOR SUCH POOLS, AND (C) AS THE ONLY PRACTICAL MEANS OF RESTORING PARTICIPATION OF US SHIPPING LINES WHICH ARE OTHERWISE CUT OUT OF THE TRADE BY EXCESSIVE LA GOVERNMENTAL CARGO PREFERENCE MEASURES. IT SHOULD BE EMPHASIZED MOREOVER THAT THESE AGREEMENTS - WITH ONE EXCEPTION - DO NOT AND CANNOT ALLOCATE ALL THE LINER CARGOES IN THE TRADE (AS THE UN LINER CODE

PROVIDES) BUT GENERALLY PROVIDE (A) EQUAL ACCESS BY BOTH LINES TO GOVERNMENTAL CARGOES, AND (B) POOLING OF REVENUE DERIVED FROM CARGOES ACTUALLY CARRIED. THUS, THEORETICALLY, THESE AGREEMENTS DO NOT DEPRIVE THIRD-FLAG LINES OF ACCESS TO COMMERCIAL CARGOES, BUT SIMPLY PERMIT US CARRIERS EQUAL ACCESS TO RESERVED CARGOES OTHERWISE DENIED TO THEM. WE RECOGNIZE THAT OUR CONTENTION THAT THE ABOVE APPROACH IS NOT INCONSISTENT WITH MFN OBLIGATIONS OF OUR FCN TREATIES IS QUESTIONED BY SOME EUROPEANS.

7. US-USSR MARITIME AGREEMENT--CARGO-SHARING PROVISIONS OF THIS AGREEMENT, WHICH OF COURSE IS INTERGOVERNMENTAL AS DISTINCT FROM ABOVE-DESCRIBED COMMERCIAL POOLING AGREEMENTS, RESTS ON CONCEPT OF GOVERNMENT-CONTROLLED CARGO. IN VIEW OF SOVIET GOVERNMENT ABILITY IN LAST INSTANCE TO CONTROL ROUTING OF CARGOES IN ITS TRADE, WE SEE NO PRACTICAL ALTERNATIVE BUT FORMULA BASED ON EQUAL CONFIDENTIAL

PAGE 05 STATE 147448

ACCESS OF US SHIPPING WITH SOVIET SHIPPING LINES TO CARGO

GENERATED BY OUR BILATERAL TRADE. OECD/MTC CONSULTATION EXERCISE LAST FALL (REF OECD PARIS 25900, OCT. 3) SHOWED THAT THIRD-FLAG CARRIERS HAD HIGHER PERCENTAGE PARTICIPATION IN US-USSR TRADE THAN IN SOVIET-WESTERN EUROPEAN TRADE, THUS DEMONSTRATING THAT COMPETITION AND EFFECTIVE NON-DISCRIMINATION WERE NOT ENHANCED BY ABSENCE OF SUCH AGREEMENT.

8. IN ADDITION TO ABOVE DEFENSE OF US SHIPPING POLICIES, IT IS EVIDENT THAT SHIPPING POLICIES AND PRACTICES OF MANY OTHER OECD COUNTRIES ARE NOT AS LIBERAL AS THEY FREQUENTLY PRETEND. ON SUBJECT OF MARITIME AIDS EUROPEANS AND JAPANESE HAVE WIDE RANGE OF POLICIES, MANY OF WHICH ARE INTRICATELY RELATED TO DOMESTIC TAX AND SOCIAL BENEFITS SYSTEMS WHICH MAKE COMPARISONS WITH THE US SYSTEM DIFFICULT. WHILE MOST OTHER OECD COUNTRIES DO NOT HAVE STATUTORY OR REGULATORY REQUIREMENTS FOR CARGO PREFERENCE, WE SUSPECT THAT THROUGH ADMINISTRATIVE PRACTICES AND NATIONAL TRADITIONS THEY OFTEN ACHIEVE MUCH THE SAME RESULT. WE WOULD GUESS, FOR EXAMPLE, THAT MOST GOVERNMENT, AID, AND STATE MONOPOLIES' CARGOES OF OTHER OECD COUNTRIES MOVE ON NATIONAL FLAG VESSELS, ALTHOUGH OTHER OECD GOVERNMENTS PROFESSED DURING COURSE OF MTC CONSULTATION EXERCISE MENTIONED ABOVE NOT TO HAVE STATISTICAL DATA ON CARRIAGE OF THESE CARGOES. COMMERCIAL AND CORPORATE TIES BETWEEN SHIPPING LINES AND MAJOR TRADING HOUSES ALSO MAKE IT VIRTUALLY IMPOSSIBLE FOR US SHIPPING LINES TO COMPETE FOR CERTAIN CARGOES. FINALLY, EUROPEANS AND JAPANESE HAVE TOLERATED AND TACITLY ENCOURAGED THE CLOSED CONFERENCE SYSTEM WHICH IS HIGHLY

EFFECTIVE CONSTRAINT ON COMPETITION AND IT HAS PROBABLY AS EFFECTIVELY PERMITTED ACHIEVEMENT OF MARITIME GOALS (ESPECIALLY ASSURING MARKET ACCESS) OF CERTAIN OECD COUNTRIES (FOR EXAMPLE, NORTHERN EUROPEANS AND JAPAN) AS HAVE SOME OF MORE VISIBLE US POLICIES.

9. IN SUMMARY, WE SEE LINER SHIPPING AS ANOTHER FIELD OF INTERNATIONAL ECONOMIC RELATIONS IN WHICH US PUBLIC AND STATUTORILY-BASED PRACTICES ARE MORE VULNERABLE TO CRITI-CONFIDENTIAL

PAGE 06 STATE 147448

CISM THAN THE ADMINISTRATIVELY-BASED AND GENTLEMEN'S AGREEMENT TYPE OF ARRANGEMENTS FOUND IN NON-US TRADES. IN GENERAL, FRENCH (AND TO LESSER EXTENT, SPANIARDS AND GREEKS) HAVE BETTER APPRECIATED THE ANTI-COMPETITIVE ASPECTS OF NON-US CONFERENCES AND HAVE THUS FREQUENTLY EXPRESSED SYMPATHY FOR US ARGUMENTS DURING US-EUROPEAN SHIPPING POLICY DEBATES. IN SIMILAR VEIN, WE FREQUENTLY FOUND OURSELVES, DURING NEGOTIATIONS ON UN LINER CODE,

IN AGREEMENT WITH SOUTHERN RATHER THAN NORTHERN EUROPEANS ON ISSUE OF REGULATION OF CONFERENCES.

10. AS TACTICAL MATTER, HOWEVER, WE CONSIDER THAT LITTLE WOULD BE GAINED AT THIS STAGE BY IC REVIEW OF EXISTING CONFERENCE PRACTICES SO THOROUGH AS TO REQUIRE EXPLANATION (AND JUSTIFICATION) OF US POLICIES AND PRACTICES AS DESCRIBED ABOVE. THIS IS NOT BECAUSE WE DO NOT THINK THESE POLICIES ARE DEFENSIBLE OR BECAUSE WE WOULD NOT WISH MORE THOROUGH OECD EXAMINATION OF CLOSED CONFERENCE SYSTEM AND ITS POSSIBLE INCOMPATIBILITY WITH OECD INVISIBLES CODE, BUT RATHER BECAUSE DETAILED REVIEW OF ABOVE ISSUES WOULD NECESSARILY PIT US AGAINST OUR NATURAL ALLIES (UK AND SCANS) IN FIGHT AGAINST UN LINER CODE. WE BELIEVE FIRST PRIORITY BELONGS TO OECD FINDING OF INCOMPATIBILITY BETWEEN UN AND OECD CODES, AN EXERCISE IN WHICH UK, SCANS, AND GREEKS IDEALLY SHOULD BE IN LEAD. SUBSEQUENTLY WE SHOULD BE PREPARED TO SUPPORT FRENCH DESIRE FOR THOROUGH REVIEW OF (CLOSED) CONFERENCE SYSTEM IN RELATION TO OECD INVISIBLES CODE.

11. MISSION MAY DRAW ON ABOVE DURING IC DISCUSSION OF INCOMPATIBILITY ISSUE AND IN FOLLOW-UP TO EXTENT IT CONSIDERS NECESSARY, WITH PARA. 10 CAVEAT IN MIND. SISCO

CONFIDENTIAL

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 27 JUL 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: IMPORTS, DRUG CONTROL, DRUG TRAFFIC, PROCUREMENT
Control Number: n/a
Copy: SINGLE
Draft Date: 09 JUL 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE147448
Document Source: ADS
Document Unique ID: 00
Drafter: EB/TT/MA:RWEBB:EW
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: P740146-1973
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740789/abbryzqo.tel
Line Count: 265
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A) STATE 144455; B) STATE 135632
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 02 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02 APR 2002 by worrelsw>; APPROVED <19 JUN 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SHIPPING: STUDIES OF UN LINER CODE BY OECD INVISIBLES COMMITTEE
TAGS: SNAR, US, CH, BM
To: OECD PARIS INFO GENEVA
LONDON
BRUSSELS
TOKYO
BONN
HAMBURG
COPENHAGEN

OSLO
EC BRUSSELS
THE HAGUE
MADRID
USUN N Y

Type: TE

Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005